

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

V.

23.311 ACRES OF LAND, more or less,
situated in HIDALGO COUNTY, STATE
OF TEXAS; and FRANK SCHUSTER FARMS
INC., et al.,

Defendants.

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CASE NO. 7:19-CV-407

**DEFENDANT FRANK SCHUSTER FARMS, INC.'S MOTION FOR
STATUS CONFERENCE REGARDING FLOOD LEVEE INTEGRITY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW FRANK SCHUSTER FARMS, INC., Defendant herein, which makes and files this, its Motion for Status Conference Regarding Flood Levee Integrity, and in support of which would respectfully show unto the Court as follows:

The United States commenced this case on December 10, 2019, by filing a Declaration of Taking, which sought to acquire fee simple interest in property identified as RGV-WSL-4000.¹ On December 16, 2019, the United States deposited \$310,873 in the registry of the Court as estimated just compensation.² Upon deposit of the estimated just compensation, title to the tract identified as RGV-WSL-4000 vested in the name of the United States by operation of law.³

On January 20, 2021, President Joseph R. Biden executed a Presidential Proclamation, terminating the national emergency at the Southern Border Wall and directing “a careful review

¹ Dkt. No. 1.

² Dkt. No. 5.

³ Upon the filing of the Declaration of Taking and depositing the estimated compensation in the Registry of the Court, the following events occur by operation of law: “1 title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.” 40 U.S.C. § 3114(b); *see E. Tennessee Nat. Gas. Co. v. Sage*, 361 F.3d 808, 825 (4th Cir. 2004) (in a Declaration of Taking Act case, “[t]itle and the right to possession vest in the government immediately upon the filing of a declaration and the requisite deposit.”).

of all resources appropriated or redirected to construct a southern border wall” through the development of “a plan for the redirection of funds concerning the southern border wall.”⁴

The parties have requested that the Court stay these condemnation proceedings while awaiting direction regarding the project from the Government. [Dkt. No. 45 and 51].

Before the Presidential Proclamation was issued, the Government had begun work on the border barrier on the property that is the subject of the present acquisition. That work was halted pursuant to the Presidential Proclamation and Defendant has observed that the Government’s contractors are now removing equipment from the area.

Defendant is concerned about the integrity of the flood levee given its current condition and requests that the Court hold a status conference so as to hear the Defendant’s concerns and consider appropriate action.

Counsel for Defendant and Plaintiff request the Court set the status conference in May and are both available to attend a status conference via Zoom on any of the following dates: May 3, 5, 7, 17, 18, 19, or 20.⁵

WHEREFORE, PREMISES CONSIDERED, Defendant FRANK SCHUSTER FARMS, INC. prays that this Court set a status conference pursuant to Defendant’s request and for all other relief to which Defendant may show itself entitled.

⁴ Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

⁵ Counsel for Plaintiff is also requesting a status conference in a parallel matter styled Case No. 7:20-CV-034; *United States of America v. 44.697 Acres of Lane, et al.*; In the United States District Court for the Southern District of Texas, McAllen Division and requests that the status conference in this case be set concurrently with the status conference in the parallel case.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS,
FRANK SCHUSTER FARMS, INC. AND
EL SABINO FAMILY FARMS, LLC

CERTIFICATE OF CONFERENCE

I certify that on April 16, 2021 I conferred with counsel for Plaintiff and Plaintiff is unopposed to a status conference.

By: /s/ Nicholas P. Laurent
Nicholas P. Laurent

CERTIFICATE OF SERVICE

I certify that on April 20, 2021, a copy of the foregoing document was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on counsel of record.

By: /s/ Nicholas P. Laurent
Nicholas P. Laurent